

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL TURNER,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	
v.	:	NO. 05-3454
	:	
	:	
DAVID DIGUGLIELMO, et al.,	:	
	:	
Respondents.	:	

**MEMORANDUM**

BUCKWALTER, S.J.

February 10, 2006

Petitioner has filed a pleading entitled “Petitioner’s Objection to the Report and Recommendation of the U.S. Magistrate.” That objection is that the District Attorney of Philadelphia in federal court pleadings in their response to petitioner’s habeas corpus proceedings “misrepresented the facts and was premised on fraudulent premises.” This conclusionary statement is not supported by any factual basis.

To the extent that petitioner raised claims of fraud in his petition before the magistrate judge, such claims are properly dealt with in the Report and Recommendation (see pages 7 and 8).

Attempting to get around the time bar for filing a petition for habeas corpus and the bar for filing a second or successive petition, petitioner seeks relief under Rule 60(b). As carefully pointed out in the Report and Recommendation, pages 5 through 8, petitioner is not entitled to 60(b) relief.

An order follows.

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Respondents.	:	

**ORDER**

AND NOW, this 10<sup>th</sup> day of February, 2006, upon consideration of the petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, petitioner's request for relief under Federal Rule of Civil Procedure 60(b) and the Court's equitable powers, and the response to the habeas petition, and after review of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge, and petitioner's objections thereto, it is hereby ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The Petition for Writ of Habeas Corpus is DISMISSED as a second or successive petition filed without the required authorization from the Court of Appeals;
3. Petitioner's request for relief under Rule 60(b) and the Court's equitable powers is DENIED; and
4. A certificate of appealability shall not issue in that petitioner has failed to demonstrate that a reasonable jurist could conclude that the Court is incorrect in denying the petitioner's request for relief under Rule 60(b) and the Court's equitable powers and dismissing the petition as a second or successive petition.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.  
RONALD L. BUCKWALTER, S.J.